IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 983 OF 2006.

V.Tripathi
Indian Inhabitant, Aged about
43 years, residing at 2, KRV
House, 9th Lane, Shastri Nagar,
Adyar, Chennai-20. ... Petitioner.

Versus.

1. The State of Maharashtra

2. Shashank Narayan Ambardekar
A-103, Kanak Apartment,
Saraswat Colony, Dombivali
East, Dist. Thane. ... Respondents.

Shri Prashant H.Chande with Shri F.Sayyed i/by
M/s.Manilal Kher Ambalal & Co. for the Petitioner.

Shri R.R.Arolkar for the Respondent No.2.

Shri Rajesh More, A.P.P. for State.

CORAM : ABHAY S.OKA, J.

DATED : 10th October, 2006.

ORAL JUDGMENT.:

1. Rule. The learned Advocate for the 2nd Respondent waives service. The learned A.P.P. waives service for the State. Taken up for hearing forthwith considering the facts and circumstances of the case.

2. By the impugned order dated 3rd February 2006, the leaned Adhoc Additional Sessions Judge, Kalyan dismissed the Revision Application filed by the Petitioner on the ground that the same was barred by limitation. The submission of the learned Advocate for the Petitioner is that the Revision Application was decided in the absence of the Advocate for the

Petitioner. Secondly it is submitted that the Revision Application is not barred by limitation and in any event even if the Court comes to the conclusion that there is a delay in filing the Revision Application, the Petitioner is ready and willing to file an application for condonation of delay and will be in a position to explain the delay. The learned Advocate appearing for the 2nd Respondent submitted that there was a gross delay in filing the Revision Application and therefore, the learned Additional Sessions Judge was justified in dismissing the Revision Application as there was no application for condonation of delay filed by the Petitioner.

3. I have considered the submissions. A perusal of the impugned order shows that a request was made on behalf of the Advocate appearing for the Petitioner before the learned Adhoc Additional Sessions Judge for grant of time of about one or two days as the concerned Advocate was not present. However, the learned Judge has decided the Revision Application on merits without hearing the Advocate for the Petitioner. Paragraph 1 of the impugned order discloses that the Revision Application was filed on 6th February 2006 and has been decided on 8th February 2006.

4. In my view, if the learned Additional Sessions Judge was of the view that the Revision Application was barred by limitation, he ought to have granted a

reasonable time to the Petitioner to file an application for condonation of delay. Only if the application for condonation of delay was not filed within the time granted by the learned Judge, he would have been justified in dismissing the Revision Application on the ground that the Revision was barred by limitation. Only on the ground that an opportunity was not given to the Petitioner to file an application for condonation of delay, the impugned order will have to be quashed and set aside. As stated earlier, the Advocate for the Petitioner has offered to file an application for condonation of delay.

5. The learned Advocate for the Petitioner states that the Application for condonation of delay will be filed by the Petitioner on the date of appearance fixed by this Court.

6. Hence the following order is passed:

i) The impugned Judgment and order dated 8th February 2006 is quashed and set aside and the Criminal Revision Application No.17 of 2006 is restored to file.

ii) Time is granted upto 6th November 2006 to the Petitioner to file an application for condonation of delay. If the Application for condonation of delay is not filed on or before

6th November 2006, the impugned order dated 8th February 2006 will stand.

iii) If the Application for condonation of delay is filed on or before 6th November 2006, the learned Judge will take up the application for condonation of delay for hearing after allowing the contesting Respondents to file reply.

iv) The parties are directed to appear before the 1st Adhoc Additional Sessions Judge, Kalyan, on 6th November 2006 at 11.00 a.m. It is made clear that no further notice of the date fixed will be issued to both the parties.

v) Till 6th November 2006, the learned trial Judge will grant exemption to the Petitioner. Thereafter it will be for the Petitioner to apply for appropriate relief before the Sessions Court.

vi) Rule is partly made absolute in the above terms with no order as to costs.

vii) The parties and the concerned Court to act on an authenticated copy of this order.

Judge.